



Fw: Pasolivo Project

Frank Mecham to: Board of Supervisors, Cherie McKee, Jocelyn
Brennan, Hannah Miller, Jennifer Caffee,
cr_board_clerk Clerk Recorder

06/01/2015 02:31 PM

Sent by: **Vicki Shelby**

Frank R. Mecham
District 1 Supervisor
1055 Monterey St. Rm. D430
San Luis Obispo, CA 93408
(805) 781-5450

FMecham@co.slo.ca.us

----- Forwarded by Vicki Shelby/BOS/COSLO on 06/01/2015 02:31 PM -----

From: Susan Garretson <susanpoalillo@gmail.com>
To: fmecham@co.slo.ca.us
Date: 06/01/2015 02:00 PM
Subject: Pasolivo Project

Dear Supervisor Mecham,

I live at 7970 Vineyard Dr. approx 1.5 miles from the Pasolivo Olive Ranch. I support their expansion plans and have personally witnessed the cramped space in their very popular tasting room. They are good neighbors and have been very good to me personally by referring their tasters to my tasting room, Poalillo Vineyards. As for recycling and reusing the old barn wood, that is exactly what we did when our 100 year old barn became unsafe. We used it to finish the interior of our tasting room, build our stage and build a great looking fence at our parking area. So many more people now get to enjoy these old materials and hear the wonderful stories about the original materials on the property. I understand that there have been personal attacks on Pasolivo's owner and that is not new in this neighborhood as you may be aware of. Thacher Winery was under attack when they were following all the rules to open, also Changala, Oso Libre and others. As for myself, I have experienced graffiti on 4 signs that I paid to replace. Also Opolo, Hammersky and Pipestone have had similar problems. I understand that Pasolivo has followed the rules and I believe they should be able to proceed. Unfortunately our one peaceful neighborhood has been hijacked and threatened by people who do not need to make a living here. It is the "I have mine and you can't have yours" attitude that is decidedly Un American and further threatens our ever dwindling liberty. I personally do not believe that traffic is a problem out here and if there is a problem it is that there is not enough of it!

Best Regards,

Susan J. Poalillo

Agenda Item No: 33 • Meeting Date: June 02, 2015
Presented By: Susan J. Poalillo
Rec'd prior to the meeting & posted on: June 01, 2015

plans



Fw: Pasolivo Project

Frank Mecham to: cr_board_clerk Clerk Recorder, Board of
Supervisors, Cherie McKee, Jocelyn
Brennan, Hannah Miller, Jennifer Caffee

06/01/2015 02:32 PM

Sent by: **Vicki Shelby**

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----- Forwarded by Vicki Shelby/BOS/COSLO on 06/01/2015 02:31 PM -----

From: Martin Croad <martincroad@gmail.com>
To: fmecham@co.slo.ca.us
Date: 06/01/2015 02:01 PM
Subject: Pasolivo Project

We generally support the Pasolivo project as we know it to be.
Projects of this type based on Agriculture products in my view help better the Paso Robles and SLO
county region.
Martin Croad



Fw: Support for Pasolivo Project

Frank Mecham to: Board of Supervisors, Cherie McKee, Jocelyn
Brennan, Hannah Miller, Jennifer Caffee,
cr_board_clerk Clerk Recorder

06/01/2015 02:39 PM

Sent by: **Vicki Shelby**

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----- Forwarded by Vicki Shelby/BOS/COSLO on 06/01/2015 02:32 PM -----

From: S Keith Belmont <skbelmont@hotmail.com>
To: "fmecham@co.slo.ca.us" <fmecham@co.slo.ca.us>
Date: 06/01/2015 02:21 PM
Subject: Support for Pasolivo Project

Frank,

I would like to support the Pasolivo Project. It seems consistent with, and fits well with, the local winery uses. Please don't let one loud neighbor cause further delays and costs.

Thanks,

Keith Belmont



Supplemental Letter to Board

Alison Norton

to:

aramirez@co.slo.ca.us

06/01/2015 04:53 PM

Cc:

"wmcdonald@co.slo.ca.us", Ty Green, Jonathan Wittwer, "Alison Norton"

Hide Details

From: Alison Norton <anorton@wittwerparkin.com>

To: "aramirez@co.slo.ca.us" <aramirez@co.slo.ca.us>

Cc: "wmcdonald@co.slo.ca.us" <wmcdonald@co.slo.ca.us>, Ty Green
<green@ammcglaw.com>, Jonathan Wittwer <jonathan@wittwerparkin.com>, "Alison
Norton" <anorton@wittwerparkin.com>

History: This message has been forwarded.

2 Attachments



image001.gif 2015 6 01 Supp Ltr to BOS.pdf



Hi Annette –

Here is a supplemental letter for the Board.

Thanks,
Alison

ALISON N. NORTON

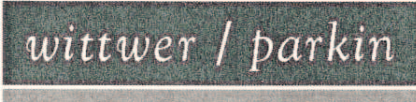
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June 1, 2015

Board of Supervisors
County of San Luis Obispo

Re: Board of Supervisors Hearing to Consider Approval of Willow Creek Minor Use Permit DRC2013-00028 and Request to Deny Permit and Require an Environmental Impact Report

Dear Members of the Board:

Attached please find an additional noise study, noise peer review and barn peer review for your reference.

A. The Project will Result In Noise Impacts in Violation of CEQA

i. Independent Noise Study Indicates Noise Excess in Violation of County Codes

Jeffrey Pack of Edward L. Pack Associates conducted a noise study on the Runyen property, directly south of the Pasolivo property and proposed project.

Jeffrey Pack determined that “[t]he results of this study revealed that a wedding reception occurring at the North Terrace of the event pavilion will generate noise levels in excess of the standards at the Runyen property line.” (Pack Noise Study, Exhibit P, p.1.) As the County is aware, one of the mitigation measures to reduce noise impacts is to have events on the North Terrace. However, this mitigation measure is clearly deficient and the proposed project continues to violate the County code.

The report goes on to state that any receptions at the proposed South Terrace would exceed County noise standards not only at the property line and at their cottages presently occupied by tenants. *Id.*

The report concludes that the expected noise levels are in violation of CEQA:

The noise levels produced by the project will exceed the limits of the San Luis Obispo County Noise Ordinance and Noise Element of the General Plan. This is a **Significant Impact** per CEQA checklist item “a”.

As the project is not expected to be temporary, a permanent increase in the noise environment is expected. This is a **Significant Impact** per CEQA checklist item “c”.

The excessive noise levels produced by the project will be periodic. This is a **Significant Impact** per CEQA checklist item “d”.

WITTWER PARKIN LLP / 147 S. RIVER ST., STE. 221 / SANTA CRUZ, CA / 95060 / 831.429.4055

WWW.WITTWERPARKIN.COM / LAWOFFICE@WITTWERPARKIN.COM

Agenda Item No: 33 • Meeting Date: June 02, 2015

Presented By: Alison Norton

Rec'd prior to the meeting & posted on: June 01, 2015

Id. at p. 8.

ii. Peer Review of David Lord's Study Deems it Legally Inadequate

Jeff Pack also conducted a peer review of the noise study conducted by David Lord and determined it is "fatally flawed". (Pack Peer Review, Ex. Q) Like the David Dubbink study, this study is flawed for the following reasons. First, the study played music that was not representative of an actual event.

"The report indicated that the music source level from outdoor speakers does not exceed 75 dBA at 20 ft. This is far too low for dance music, whether recorded or played live, or for vocal announcement to be heard over a large (100+ attendee) event. A music sound level of 75 dBA would be considered quiet background music for an outdoor event. At a distance of 80 ft., the music level would be 63dBA, lower than a conversation. Therefore, this source level is unrealistic."

Id. at p. 4.

Jeff Pack found additional issues with the noise study:

- "First, Dr. Lord uses the term "maximum" to describe County noise standards. However, "'maximum' has a specific technical definition as is not used to describe a cumulative or time-averaged noise descriptor." *Id.* at p. 1.
- "Dr. Lord was conducting his evaluation using erroneous thresholds. "Dr. Lord failed to include Subsection B.3 regarding the 5dB downward adjustment to this noise standards to account for speech and music. Thus, the daytime noise limits applicable to the project are: 65 dBA maximum and 45dBA Leq." *Id.*
- "Dr. Lord uses only the cumulative noise metric (Leq). He ignores the maximum noise limit throughout the remainder of the study. He provides no reasoning for the omission in the maximum noise analysis." *Id.* at p. 2.
- "Dr. Lord uses the term "Sound Power" erroneously. Sound Power is different than Sound Pressure, which is what is measured and used in environmental noise analyses." *Id.*
- "Regarding the mitigation measures, "These mitigation measures are merely a reiteration of the noise standards. There is no mention as to how these goals will be achieved." *Id.*
- "The author infers that a 200 attendee event is not large enough to generate substantial crowd noise. A crowd of 200 people or even 100 people cheering and clapping could easily generate high sound levels in relation to the existing ambient conditions." *Id.* at p. 3

- “There are no data or calculations to back up the assertion that group of people either inside or outside the event facility would remain within the 50dBA Leq (actually 4 dBA Leq) limit of the standards. There is no discussion of the Noise Reduction provided by the ‘barn’ building shell for interior noise sources.” *Id.*
- “No data from the referenced Bianchi Winery, Edna Valley Winery or Opolo Vineyards were provided. There is no discussion of the noise sources at the facilities, nor is there a discussion of differences between recorded music (DJ) and live music. The reference data should be provided along with the calculation methods to determine the noise levels in the project vicinity and the results.” *Id.*
- “The report discusses the nearest existing noise sensitive receptor is over 350 ft. from the outdoor activity area. The noise standards are applicable at the property line.” *Id.*
- “The report continues to state that the noise levels will not exceed 50 dBA Leq at nearby property boundaries. The report does not state what the noise levels will be and continues to disregard the maximum noise limit.” *Id.*

Mr. Pack further critiques the fact that there is no analysis or evaluation of the project to the General Plan, but only conclusory statements made that the sound level will not exceed the County Noise Element. *Id.* at p. 4. The project **is not temporary**, the project is for 20 events with up to 200 people for a duration of ten years. This is “far more permanent in nature and will increase the ambient noise levels in the area.” *Id.* There will in fact be “periodic increases in the ambient noise environment. It is hard to believe that a band playing on the South Terrace will not cause a periodic increase in the noise levels for people at the Runyen property line 140 ft. away and their occupied cottages 280 ft. away.” *Id.*

The Dr. Lord report fails to appropriately analyze maximum noise levels, and the study does not “clearly state what the maximum and average noise levels will be at the various receptor locations.” *Id.*

Mr. Pack concludes, “the noise analysis prepared by 45dB Acoustical Consulting is fatally flawed as it did not adequately report the applicable noise standards, did not quantify the noise sources at the affected receptor locations and did not provide noise mitigation measures for noise excesses.” *Id.* at p. 5.

The report is **fatally flawed and the MND is also fatally flawed**. The MUP should not be approved and an EIR is required.

B. The LSA Archaeological Report and Memorandum is Legally Inadequate

Mr. McMorris reviewed the LSA Associates May 27, 2015 Memorandum submitted to this Board. Mr. McMorris continues to take issue with the LSA analysis of the King Vidor Barn. “None of the LSA documents (memos and report) provide historic context regarding the existing building stock of northwest San Luis Obispo County or the Central Coast....[I]n the National

Park Service, National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*, properties must be evaluated within their appropriate historic context.” (Exhibit R, p. 2.) Based on his review, Mr. McMorris determined that “there is still a lack of sufficient substantial evidence in the record to support the conclusion that the barn on the Pasolivo property is not eligible under CRHR Criterion 3 for embodying distinctive characteristics of a type, period, and method of construction.” (*Id.* at p. 3.).

Case law makes clear that the barn can qualify as a historic resource even if it is not on the California Register of Historical Resources (CRHR), but here Webster has produced credible expert evidence that the barn has the potential to be eligible for the CRHR. Petitioners have clearly submitted substantial evidence, including expert reviews, that there is substantial evidence to support a fair argument that the King Vidor barn is historic. For example, in *Architectural Heritage Assn. v. County of Monterey* (2004), 122 Cal.App.4th 1095, 1114, the Court stated:

Cartier concluded that the jail “does appear ... to qualify as potentially eligible for listing” on the California Register of Historic Resources [CRHR] ... under the second criterion Cartier thus explicitly acknowledged the “historic significance of the structure”

Expert Christopher McMorris concluded the same as to the King Vidor barn, but as it applied to Criterion 3. (Declaration of Christopher McMorris, Ex. L, p.3) Thus, the King Vidor Barn appears to be eligible for CRHR listing under **both** Criterion 2 (based on the association with a famous person) and Criterion 3 for its unique construction (based on the Peer Review of Christopher McMorris, First and Second Declaration of Jack Hanauer, Ex. L).

California Evidence Code section 702(b) states, “[a] witness’ personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony.” Mr. Hanauer has worked in construction for over forty (40) years and he has worked on “many unique and interesting construction projects.” (Second Declaration of Jack Hanauer, Ex. L, p.2.) He worked on restoring the King Vidor barn and thus has direct and personal knowledge of its unique features.

“Probably the most unique characteristic of this old barn (that I have never seen in all my years working in north county) are the interior posts that support the roof structure. These posts were not made out of milled lumber.....they are trees.....debarked trees that reach 20' plus in height, that support the roof beams.”

Id. Mr. Hanauer’s observation of the uniqueness of the barn is **supported** by the Declaration of Michael Hibma. “[T]he use of debarked oak trees to support the roof is an **instance of a site-specific barn construction technique**.” (LSA Memorandum, p. 9.)

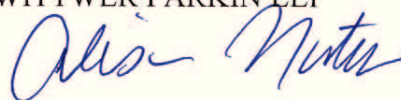
As Mr. McMorris states, “there appears to be some potential that the barn embodies distinctive characteristic for a type, period, region, **or method of construction, such that it would be eligible under CRHR Criterion 3**, and it may retain sufficient historic integrity to convey its significance.” (Declaration of Christopher McMorris, Ex. L, p. 6).

Experts agree that this barn has potential to be eligible under CRHR Criterion 3. Experts further question the LSA Associates Archaeological Report. Case law makes clear that when there is a dispute among experts, an EIR is required. An EIR is thus mandated by law.

C. Reply Brief in 15CVP-0093

Attached as Exhibit S is Petitioner's Reply Brief in the pending case.

Very truly yours,
WITTWER PARKIN LLP



Alison Norton

EXHIBIT P

Agenda Item No: 33 • Meeting Date: June 02, 2015
Presented By: Alison Norton
Rec'd prior to the meeting & posted on: June 01, 2015



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June 1, 2015
Project No. 47-020-1

Jonathan Wittwer, Esq.
Wittwer Parkin, LP
147 South River Street
Suite 221
Santa Cruz, CA 95060

Subject: Acoustical Analysis of Wedding Event Noise in Relation to the Pasolivo Events/Olive Oil Production Expansion, Vineyard Drive, San Luis Obispo County

Dear Mr. Wittwer:

This report presents the results of a wedding event noise analysis performed at the Runyen property in relation to the proposed Pasolivo Events/Olive Oil Production Expansion along Vineyard Drive in San Luis Obispo County. The purpose of this acoustical analysis (noise study) was to determine the noise impacts to adjacent and nearby noise sensitive land uses from wedding events at the remodeled Pasolivo facility using methodologies to accurately collect data without encroaching on the subject property. The primary residences of concern are the Runyen residence, located at 8380 Vineyard Drive and the Webster residence located at 8787 Vineyard Drive. The Runyen residence is immediately adjacent to the south of the Pasolivo property. The Webster residence is north of the subject project site. The results of this study revealed that a wedding reception occurring at the North Terrace of the event pavilion will generate noise levels in excess of the standards at the Runyen property line. Wedding receptions at the South Terrace of the event pavilion will also generate noise levels in excess of the standard at the Runyen property line and at their occupied cottages.

To determine the levels of wedding event noise at the nearby residences, a replication of a portion of a typical wedding reception was performed. Noise levels were measured at various noise sensitive locations at the Runyen property and at the Webster property.

Sections I and II of this report contain the noise standards applicable to the Pasolivo event proposal and a description of the event replication study, respectively. Section III contains the results of the noise measurements and evaluations.

Noise Standards

Section 22.10.120 (B) of the San Luis Obispo County Land Use Ordinance, Ref. (a), is applicable to stationary noise sources at the Pasolivo property.

Exterior noise level standards. The exterior noise level standards of this Section are applicable when a land use affected by noise is one of the following noise-sensitive uses: residential uses listed in Section 22.06.030 (Allowable Land Uses and Permit Requirements), except for residential accessory uses and temporary dwellings; health care services (hospitals and similar establishments only); hotels and motels; bed and breakfast facilities; schools (pre-school to secondary, college and university, specialized education and training); churches; libraries and museums; public assembly and entertainment; offices, and outdoor sports and recreation.

1. No person shall create any noise or allow the creation of any noise at any location within the unincorporated areas of the county on property owned, leased, occupied or otherwise controlled by the person which causes the exterior noise level when measured at any of the preceding noise-sensitive land uses situated in either the incorporated or unincorporated areas to exceed the noise level standards in the following table. When the receiving noise-sensitive land use is outdoor sports and recreation, the following noise level standards shall be increased by 10 dB.

Maximum Allowed Exterior Noise Level Standards		
Sound levels	Daytime 7 a.m. to 10 p.m.	Nighttime (1) 10 p.m. to 7 a.m.
Hourly Equivalent Sound Level (L_{eq} dB)	50	45
Maximum Level, dB	70	65

Notes:

1. Applies only to uses that operate or are occupied during nighttime hours
2. In the event the measured ambient noise level exceeds the applicable exterior noise level standards in Subsection B.1, the applicable standard shall be adjusted so as to equal the ambient noise level plus one dB.
3. Each of the exterior noise level standards specified in Subsection B.1 shall be reduced by five dB for simple tones, noise consisting primarily of speech, music, or for recurring impulsive noises.
4. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient noise level can be measured, the noise level measured while the source is in operation shall be compared directly to the exterior noise level standards.

Of particular importance is Subsection B.3, where the noise source limits are reduced by 5 decibels if the source is primarily speech, music or contains recurring impulsive noises. Therefore, the noise limits applicable to a wedding reception are:

<u>Daytime</u>	<u>Nighttime</u>
45 dBA L_{eq}	40 dBA L_{eq}
65 dBA Maximum	60 dBA Maximum

The San Luis Obispo County Noise Element of the General Plan, Ref. (b), reiterates these standards.

In addition to the local jurisdictional standards, the California Environmental Quality Act (CEQA) contains standards for limiting noise increases due to a project. CEQA employs a checklist to determine if a project will have a significant impact, less than significant impact, or no impact on an existing noise sensitive land use. The checklist is provided below:

- a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
- b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?
- c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?
- d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

Noise Measurement Methodologies

To determine the noise levels at the nearby residential properties, a professional local DJ experienced (40 years) with wedding reception performance was commissioned for the purposes of this study. The DJ set up his typical entertainment system, which included a digital music source (computer based), mixing board, wireless microphone and powered speakers on stands. The DJ was given instructions to play two recent and popular wedding reception dance songs (R&B/hip-hop) with a vocal announcement between the songs and perform as though this was an actual wedding reception with approximately 100 guests of typically younger age and boisterous attitude. This program material was 8.5 minutes in duration and once the sound levels were set, the program was repeated at the same volume for each measurement location.

This first series of measurements situated the DJ facing northeast to replicate a DJ at the Pasolivo event pavilion at the North Terrace. A reference sound level test of the program was performed at 40 ft. from the face of the speakers. The music reference sound level was 83 dBA L_{eq} @ 40 ft. over the 8.5 minute program. The maximum sound level was 100 dBA and was due to the vocal inflections during the “get up and dance” announcement.

The program was repeated for noise level measurements to the south of the DJ at 240 ft. (corresponding to the distance from the North Terrace stage to the Runyen property line), at the Runyen's new house, and at the Webster's rear yard. The DJ then turned the speakers to face the southwesterly direction similar to the event pavilion South Terrace. The noise measurements were repeated at the Runyen's new house and at the Webster's rear yard. A measurement was made at 140 ft. south of the south facing speakers corresponding to the distance from the South Terrace to the Runyen property line.

The measurements were made on Saturday, May 16, 2015 using a Larson Davis LDL 812 Precision Integrating Sound Level Meter with audio recordings made using a Tascam DR-40 Linear PCM Recorder. The meter and output audio signal were calibrated before and after the tests to assure accuracy. The meter conforms to ANSI S1.4 for Type 1 instruments. The meter provides, by direct readout, a series of descriptors versus time, including the L_{max} and L_{eq} values.

The noise measurement locations and DJ setup are shown on Figures 1 and 2 on page 6.

Noise Measurement Results

Table I on page 8 provides a summary of the noise measurement study. Shown in the Table are the measurement locations, the direction of the speakers, the distance from the DJ to the receptor location, the measured maximum and L_{eq} values, observations regarding the music/announcement sound levels, the noise level limits and the noise excesses.

As shown in the Table, noise excesses will occur at the Runyen property line when DJ's perform at both the North Terrace and at the South Terrace. The noise excesses are shown in **Red**. Although, the noise excesses at the property line are relatively minor when performance occurs at the North Terrace, the noise excesses at the property line with performance at the South Terrace would be considered extreme with high noise levels during much of a reception.



FIGURE 1 – Noise Measurement Locations



FIGURE 2 – Noise Measurement Locations

TABLE II
Wedding Reception Noise Levels

Wedding Reception Noise Levels										
LOCATION	Speaker Direction	Dist. To DJ	Sound Level, dBA		Duration	Observations	Sound Level Limits		Sound Level Excess	
			Lmax	Leq			Lmax	Leq	Lmax	Leq
Ryunen Property Line	Northeast	40	100	83	8.5	Reference Test				
	Northeast	650	63	42	8.5	Music/DJ barely audible				
	Ryunen New House	2400	67	48	8.5	North Terrace to PL				
Ryunen Cottages	Northeast	3600	82	62	7.5	Music not audible				
Webster Rear Yard	Northeast	3600	77	55	8.5	Music not audible				
Webster Rear Yard	Southwest	3600	93	69	8.5	South Terrace to PL				
Ryunen Cottages	Southwest	140	70	50	9	Music/DJ audible, within ambient				
Ryunen New House	Southwest	650	70	50	9	Music/DJ audible, within ambient				

The music program used in this study was composed of two dance songs and a vocal announcement over an 8.5 minute period. A wedding reception will often have “down time” between songs and slow songs. If 50% of the music is dance music, the expected L_{eq} 's would be 3 dB lower than what is represented herein. The L_{max} values would not be affected.

Note that DJ music, due to the inherent recording techniques of for-sale music, is more consistent in terms of sound levels (few transient sounds) than a live music performance. This is evidenced by the high sound levels produced during the vocal announcements even though the announcement was in line with the music volume.

Live bands will have a tendency to play louder than a comparable recorded music performance. In addition, live band sound transmission is not as directional as recorded music that is played only through a pair of speakers. Instruments such as drums and guitars will produce sounds that travel in different directions. Typically, the back of a guitar amplifier is open such that the produced sound is also transmitted in the backward direction.

There is general concurrence that the ambient sound levels are relatively low in the area. The high sound levels at the Runyen property that are expected with performances at the South Terrace will add substantially to the ambient noise levels.

The noise levels produced by the project will exceed the limits of the San Luis Obispo County Noise Ordinance and Noise Element of the General Plan. This is a **Significant Impact** per CEQA checklist item “a”.

As the project is not expected to be temporary, a permanent increase in the noise environment is expected. This is a **Significant Impact** per CEQA checklist item “c”.

The excessive noise levels produced by the project will be periodic. This is a **Significant Impact** per CEQA checklist item “d”.

Conclusions


To resolve noise excesses at the Runyen property, entertainment using amplified systems, would not be permitted at the South Terrace. All amplified entertainment at the North Terrace would be required to remain inside the event center during performances. Monitoring of the sound levels at the property boundaries should also be required to maintain acceptable sound levels.

This report presents the results of an acoustical analysis of a wedding reception replication at the Runyen residence at 8380 Vineyard Drive and at the Webster residence at 8787 Vineyard Drive in San Luis Obispo County.

If you have any questions or would like an elaboration on this report, please call me.

Sincerely,

EDWARD L. PACK ASSOC., INC.

A handwritten signature in blue ink, reading "Jeffrey K. Pack", is written over a horizontal line.

Jeffrey K. Pack
President

EXHIBIT Q

Agenda Item No: 33 • Meeting Date: June 02, 2015
Presented By: Alison Norton
Rec'd prior to the meeting & posted on: June 01, 2015



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March 11, 2015
Project No. 47-020

Jonathan Wittwer, Esq.
Wittwer Parkin, LP
147 South River Street
Suite 221
Santa Cruz, CA 95060

Subject: Peer Review of the Acoustical Analysis for the Pasolivo Events/Olive Oil
Production Expansion, Vineyard Drive, San Luis Obispo County, by
David Dubbink Associates

Dear Mr. Wittwer:

This report is a peer review of the acoustical analysis for the Pasolivo Events and Olive Oil Production Expansion along Vineyard Drive in San Luis Obispo County prepared by Dr. David Dubbink of David Dubbink Associates. The purpose of the acoustical analysis (noise study) was to determine the noise impacts to adjacent and nearby noise sensitive land uses from events at the remodeled facility. A main concern not addressed in the noise study are the noise impacts to the Webster residence located at 8787 Vineyard Drive, which is just north of the subject project site.

For the sake of brevity, text of the noise study on which we are commenting will not be reiterated. Our comments are made in general order in which they appear in the noise study.

Page 1:

Acoustical consultants are not supposed to support the project on which they are working. The ethical standards of the consulting community require completely unbiased analyses.

It would be helpful if the maps were shown larger. It is difficult to see detail at such a small scale.

A list of the types of events should be provided, what time of day they would occur, what, if any, limitations are placed on entertainers or other noise generating sources, how many activities would occur weekly, monthly or annually.

Page 5

First paragraph: Dr. Lord uses only the cumulative noise metric (L_{eq}). He ignores the maximum noise limit throughout the remainder of the study. He provides no reasoning for the omission of the maximum noise analysis.

Page 5

Last paragraph: Although the wind speeds on Saturday May 16th were measured to be no more than 10 mph, resulting in unaffected noise measurements using an acceptable wind screen on the microphone, the wind that afternoon caused an increase in the ambient noise levels due to wind blowing through the trees. The Edward L. Pack Associates, Inc. noise study started that morning when there was little wind. At approximately 12:30 PM, the wind kicked up raising the ambient sound levels from the upper 30's to the low 40's (dBA).

Page 6

Third paragraph: Dr. Lord uses the term "Sound Power" erroneously. Sound Power is different than Sound Pressure, which is what is measured and used in environmental noise analyses. Sound Power is a sound emission value at zero distance from a source, similar to the wattage of a light bulb. A 60 Watt bulb is still 60 Watts no matter the environment. However, the brightness of that bulb depends on other factors, such as the environment, as does Sound Pressure.

Page 6

Numbered paragraphs: These mitigation measures are merely a reiteration of the noise standards. There is no mention as to how these goals will be achieved.

Page 7

First paragraph: Wedding receptions (or other events) could have up to 200 attendees. The author infers that a 200 attendee event is not large enough to generate substantial crowd noise. A crowd of 200 people or even 100 people cheering and clapping could easily generate high sound levels in relation to the existing ambient conditions.

Second paragraph: There are no data or calculations to back up the assertion that a group of people either inside or outside the event facility would remain within the 50 dBA L_{eq} (actually 45 dBA L_{eq}) limit of the standards. There is no discussion of the Noise Reduction provided by the “barn” building shell for interior noise sources.

Page 7

Third paragraph: No data from the referenced Bianchi Winery, Edna Valley Winery or Opolo Vineyards were provided. There is no discussion of the noise sources at the facilities, nor is there a discussion of differences between recorded music (DJ) and live music. The reference data should be provided along with the calculation methods to determine the noise levels in the project vicinity and the results.

Fourth paragraph: The illustrative exhibits are difficult to read. The property boundaries and other sensitive receptors are not clearly indicated.

Fifth paragraph: The report discusses the nearest existing noise sensitive receptor is over 350 ft. from the outdoor activity area. The noise standards are applicable at the property line.

Page 8

First paragraph: The report continues to state that the noise levels will not exceed 50 dBA L_{eq} at nearby property boundaries. The report does not state what the noise levels will be and continues to disregard the maximum noise limit.

The temporary increase in sound level will not exceed the County Noise Element thresholds. This is the first mention of the County Noise Element. There is no analysis or evaluation of the project to the County General Plan. What are these standards and where are the noise exposure calculations for existing (ambient) and project conditions?

The proposed project temporary increase in sound level does not generate permanent increases in the ambient noise levels. The project is not temporary, such as a construction project. The project is more permanent in nature and will increase the ambient noise levels in the area.

The proposed project sound levels do not expose sensitive receptors in the project vicinity to a significant temporary or periodic increase in ambient noise. Actually, there will be periodic increases in the ambient noise environment. It is hard to believe that a band playing on the South Terrace will not cause a periodic increase in the noise levels for people at the Runyen property line 140 ft. away and at their occupied cottages 280 ft. away.

The report fails to analyze maximum noise levels. Nowhere in the study does it clearly state what the maximum and average noise levels will be at the various receptor locations.

The report did not address the potential for noise excess from performances at the South Terrace.

The report continually stated that the noise levels will not exceed 50 dBA L_{eq} at the receptors. But, it did not state what the noise levels will be. The graphics are vague, so it is difficult to ascertain what the noise environment will be like during an event.

The report indicated that the music source level from outdoor speakers does not exceed 75 dBA at 20 ft. This level is far too low for dance music, whether recorded or played live, or for vocal announcement to be heard over a large (100+ attendee) event. A music sound level of 75 dBA at 20 ft. would be considered quiet background music for an outdoor event. At a distance of 80 ft., the music level would be 63 dBA, lower than a conversation. Therefore, this source level is unrealistic.

In conclusion the noise analysis prepared by 45 dB Acoustical Consulting is fatally flawed as it did not adequately report the applicable noise standards, did not quantify the noise sources at the affected receptor locations and did not provide noise mitigation measures for noise excesses.

Amplified music (other than soft background music) should not be allowed at the South Terrace. Large event bands and DJ's should be limited to performing inside the building with any openings in the building shell facing north/northwest only. The building should be designed to contain music/speech for compliance with the standards at all property boundaries. Sound monitoring should be required for all large events to ensure compliance with the standards at all time.

If you have any questions or would like additional information, please call me.

Sincerely,

EDWARD L. PACK ASSOC., INC.

A handwritten signature in blue ink, reading "Jeffrey K. Pack", is written over a horizontal line.

Jeffrey K. Pack
President

EXHIBIT R

Agenda Item No: 33 • Meeting Date: June 02, 2015
Presented By: Alison Norton
Rec'd prior to the meeting & posted on: June 01, 2015

Stephen R. Wee, Principal / President
Rand F. Herbert, Principal / Vice President
Meta Bunse, Partner
Christopher D. McMorris, Partner

June 1, 2015

Ms. Alison N. Norton
Wittwer Parkin, LLP
147 South River Street, Suite 221
Santa Cruz, California 95060

Dear Ms. Norton:

As noted in my letter to you on May 21, 2015, JRP Historical Consulting, LLC (JRP) is under contract with Wittwer Parkin, LLP to provide historic resources compliance services related to an appeal before the Board of Supervisors of the County of San Luis Obispo regarding the Willow Creek Minor Use Permit, DRC2013-00028, and a Preliminary Injunction concerning the demolition of the barn located on the property at 8530 Vineyard Drive, Paso Robles, California 93446, which is owned by the Pasolivo Olive Oil Company. My previous letter provided information regarding the peer review JRP conducted of the report by LSA Associates, Inc. (LSA), "Phase I Archaeological Survey and Historical Assessment for the Pasolivo Project," prepared in September 2013. We also reviewed the April 17, 2015 memorandum from LSA to Kirk Consulting providing responses to comments regarding the California Register of Historical Resources (CRHR) eligibility of the barn. In addition, we prepared a preliminary assessment of the potential historical significance of the barn on the subject property. Our tasks were related to review of historic architectural / built environment resources that may be impacted by the proposed Pasolivo Project, specifically the barn on the subject property. My qualifications are noted in my previous letter to you, and I provide you my *curriculum vitae*.

Upon your request, I also reviewed the declaration of Michael Hibma dated May 29, 2015 and the memorandum from May 27, 2015 attached to Mr. Hibma's declaration. The May 27th memorandum reiterates the conclusion that the Pasolivo barn is not a historical resource, as defined by the California Public Resources Code Section 21084.1, and specifically addresses comments from my May 21, 2015 letter. The following are issues related responses made in the May 27th memorandum.

In summarizing the Pasolivo barn's eligibility evaluation under CRHR Criterion 3, the memo states the following:

The Barn is a transverse crib type, which is considered the most prolific barn design in the western United States and is a style well represented in the existing building stock of northwest San Luis Obispo County, the Central Coast, and statewide (Vlach 2003:24, 357-359). Research and field observations indicate that it reflects a design and use of materials that are vernacular in expression and commonly employed in rural carpentry (Vlach 2003:24, 357-359).

The cited work – John Michael Vlach, *Barns* (New York: W.W. Norton & Co., Inc., 2003) – discusses the transverse crib barn as a common barn type in the western United States, but does not provide any specific information about this barn type in northwest San Luis Obispo County or the Central Coast. None of the LSA documents (memos and report) provide historic context regarding the existing building stock of northwest San Luis Obispo County or the Central Coast. As noted in my previous letter, the comparative analysis conducted for the evaluation of the Pasolivo barn was inadequate. Besides the windshield survey, comparisons could have been assembled from review of the Office of Historic Preservation (OHP) Property Data File for San Luis Obispo County. Furthermore, the fact that this barn is of a type that is common does not preclude it being important within its context. Just in the Vlach book one can see that there are multiple variations of the transverse crib barn, and the Vlach book includes at least one example of this barn type in California that was found eligible for listing in the National Register of Historic Places (Le Ferve farmstead barn in Santa Clara County, illustrated on page 357, which according to the OHP Property Data File for Santa Clara County was determined eligible in 1985).

Comment 8: This comment was regarding the adequacy of the "Architectural Context" section of LSA's 2013 report. As I previously noted, the 2013 report did not present information or facts regarding the barn's design as a transverse crib barn and building practices in San Luis Obispo County and the Central Coast from the early twentieth century. Mr. Hibma states that LSA's level of effort was adequate, and dismisses the Pasolivo barn's potential significance because it represents "the most familiar barn type in the western United States," citing John Michael Vlach, *Barns* (New York: W.W. Norton & Co., Inc., 2003). The May 27th response does not provide additional information or facts that place the subject barn into sufficient historic context to support the conclusion that the building is not eligible under CRHR Criterion 3 for embodying distinctive characteristics of a type, period, and method of construction.

As discussed in the National Park Service, National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*, properties must be evaluated within their appropriate historic context, including the context of their architectural design / building form. (See Section V. How to Evaluate A Property Within Its Historic Context, available at: http://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_5.htm.) The LSA report and its memos provide only cursory attention to the theme of architecture of the agriculture buildings

on the Pasolivo property, particularly the barn. While the evaluation statement presents the appropriate geographic area in which to evaluate the barn (northwest San Luis Obispo County and the Central Coast), the historic context data provided does not present information or facts that support the conclusion. Furthermore, the limited comparison of the Pasolivo barn to the Kentucky Ranch Barn is insufficient. While both are transverse crib barns, they were built with different purposes and within differing historic contexts.

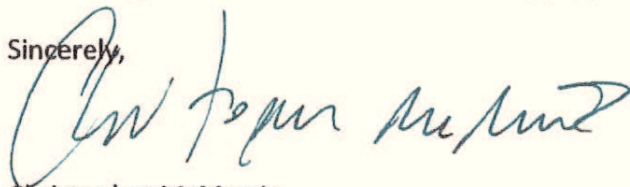
Comment 10: The statement in my May 21, 2015 letter that "some some early twentieth century transverse crib barns were not built with hay lofts" is based on JRP's extensive work evaluating barns, including barns in California and Nevada. This statement is also supported by Allen G. Noble & Richard K. Cleek, *The Old Barn Book: A Field Guide to North American Barns and Other Farm Structures* (New Brunswick, NJ: Rutgers University Press, 1995), 72.

An example in San Luis Obispo County of an early twentieth century transverse crib barns that does not appear to have been built with a hay loft is at the Tonini Ranch at 3517 Turri Road near Los Osos. JRP evaluated the barn on that property for the "Historical Resources Inventory and Evaluation Report, Los Osos Wastewater Treatment Facility, San Luis Obispo County, California" (2008). This building had a hay hood / fork with a door used to hoist hay bales. The barn did not have a hay loft and there was no evidence that it had ever had a hay loft. The presence of a door in the upper portions of the gable end of a barn, situated under a hay hood, does not specifically indicate that a hay loft was built.

Comment 11: See comments above regarding the adequacy of LSA's windshield survey. Please note that the copy of the LSA 2013 report provided to me was partially redacted on page 24, which is where the Kentucky Ranch Barn was apparently discussed.

Based on my review of Mr. Hibma's declaration, and the accompanying memorandum, it appears that there is still a lack of sufficient substantial evidence in the record to support the conclusion that that the barn on the Pasolivo property is not eligible under CRHR Criterion 3 for embodying distinctive characteristics of a type, period, and method of construction.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Morris".

Christopher Morris
Partner / Architectural Historian

EXHIBIT S

Agenda Item No: 33 • Meeting Date: June 02, 2015
Presented By: Alison Norton
Rec'd prior to the meeting & posted on: June 01, 2015

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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN LUIS OBISPO**
12 **PASO ROBLES BRANCH**
13

14 WILTON WEBSTER AND HELEN
15 WEBSTER,

Case No. 15CVP-0093

16 Petitioners,

17 vs.

**PETITIONER'S REPLY TO
WILLOW CREEK NEWCO LLC'S
OPPOSITION TO PETITIONER'S
SUPPLEMENTAL POINTS AND
AUTHORITIES**

18 COUNTY OF SAN LUIS OBISPO, and
19 DOES 1 THROUGH 15,

Respondents,

[CEQA CASE]

20 WILLOW CREEK NEWCO LLC, and
21 DOES 16 through 30,

Ex Parte Date: June 3, 2015

Time: 8:30 a.m.

Dept: 2

22 Real Parties in

Interest.

Honorable Ginger E. Garrett

I. INTRODUCTION

The barn is one piece of the entire Pasolivo Event Center project and it is unlawful for the County to approve the demolition permit before appropriate environmental review of the entire project is complete. Petitioners request a Preliminary Injunction enjoining the County from demolishing the barn until a proper environmental analysis of the entire project is complete. The County has also piecemealed the building permit by segmenting the 7 bedroom/6.5 bathroom vacation rental and the barn demolition permit from the "whole of the project."¹

Real Party contends the issue is not ripe given the County has not yet ruled on Minor Use Permit DRC2013-00028 ("MUP"), which *also* contemplates demolition of the barn. However, but for the Real Party obtaining a demolition permit and attempting to evade the appeal process before the Board of Supervisors, and the County illegally approving such a permit in violation of *Orinda*, Petitioners would not have needed to seek the present TRO and Preliminary Injunction. Hence, unless and until the Board takes final action on the MUP, there is no question that the Preliminary Injunction is ripe.

If the Board of Supervisors approves the MUP on June 2, 2015, Petitioners are immediately filing a second suit and seeking a TRO to enjoin the entire project because County standards would be violated and the Mitigated Negative Declaration ("MND") is legally inadequate. An Environmental Impact Report ("EIR") is legally required for this large scale, environmentally impactful project.

The standard of review for the historicity of the barn is fair argument. At this stage, the fair argument standard and *Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095 govern.

¹ Real Party states Petitioners have no evidence to support their regarding the County piecemealing based on a permit for the building of a motel/bed and breakfast. Petitioners obtained documentation that the original County Plan checker reasonably determined Real Party's plans were for a remodel of a single family residence to a motel. In addition, Brian Dirk, owner of Pasolivo, informed the media of his intent to convert the homes on the Pasolivo property into "vacation rentals for short and long-term stays." (<http://www.businesswire.com/news/home/20121114005017/en/Dirk-Family-Acquires-Pasolivo-Olive-Oil-Ranch#.VWpRMs9Viko>) The Dirk Project includes conversion of three buildings into vacation rentals which will be used in conjunction with the planned Event Center and thus should have been considered, at the very least, in the Mitigated Negative Declaration for the MUP.

Petitioners' experts provide substantial evidence to support a fair argument that the barn has historical significance. Petitioners are likely to succeed on the merits for this reason, as well as the County's "piecemealing" portions of the project in clear violation of CEQA. The balance of hardships weighs heavily in favor of granting the preliminary injunction. Lastly, Real Party requests a bond of \$1,000,000 while the matter is pending, stating the barn is unusable. Pasolivo has previously used the barn for events. (Petitioners First Request for Judicial Notice (RJN), Exhibit A.) Furthermore, Petitioners have attempted to engage in settlement discussions with Real Party to no avail.

II. THE ISSUE IS RIPE

Real Party erroneously believes Petitioners are asking this court to make a determination regarding the MUP presently on appeal to the Board of Supervisors. Yet, Real Party applied (and received County approval) for the demolition permit *prior* to the Board of Supervisors hearing set for June 2, 2015. Real Party's own actions created the need for this Court to rule on the TRO and Preliminary Injunction.

This issue is ripe because the demolition permit for the barn was approved by the County Building Official *without* a condition that it not be effective absent CEQA compliance and MUP approval. Thus, if the matter is considered by the Board of Supervisors but continued, the historical barn is still at risk of being demolished. Furthermore, if the Board of Supervisors delays their decision, *Orinda* still applies and the barn demolition is prohibited.²

III. LEGAL ARGUMENT

A. Standard for Issuance of Injunction and Stay

A court may grant a preliminary injunction if it appears that the balance of harms weighs

² Petitioners contend the present MUP application on appeal violates County standards and its supporting MND is not legally adequate under CEQA. While this is not the issue presently before this Court, this Court should be aware of Petitioners intent to fil a second petition if the board of Supervisors adopts the MND and approves the MUP. Thus, demolitiono of the barn will be at issue, as will many other issues, before this court.

1 in favor of the Petitioner. Code Civ. Proc., §§ 526, subd. (a), 527, subd. (c) (as previously
2 outlined in Petitioner's Points and Authorities and Supplemental Points and Authorities).

3 **B. Petitioners' Likelihood of Success on the Merits is Strong. The *Orinda* Segmentation**
4 **Rule Applies Now and the Fair Argument Standard Applies Should the County**
5 **Adopt the Legally Inadequate MND and Approve the MUP**

6 Petitioners' likelihood of success is strong. At present, *Orinda* is indisputably applicable
7 and prohibits demolition of the barn.

8 If the County Board adopts the MND and approves the MUP, Petitioners still have a
9 strong likelihood of success in the amendment to this litigation or the new litigation they will
10 file. Under *Architectural Heritage, supra*, the fair argument standard applies and the expert
11 evidence submitted to the County Board by Petitioners clearly constitutes substantial evidence of
12 a fair argument that the barn is a historic resource and will be significantly impacted (to say the
13 least) if demolished. The MND is legally inadequate under CEQA as to historical resource
14 analysis because it fails to properly evaluate the historical significance of the King Vidor
15 agricultural barn and other environmental impacts. The MND is also clearly legally inadequate
16 because it omits consideration of (and thereby illegally piecemeals) the motel/bed and breakfast
17 (described by Applicant to newspapers as conversion of three buildings on site to "upscale
18 vacation rentals").

19 *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340,
20 and *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, relied upon by Real Party,
21 are both from the 5th District and stand alone in their rejection of the fair argument standard.
22 The main question is **not** whether a building meets the definition of "historic" under the Public
23 Resources Code, but **whether there is a fair argument that it does**. Case law consistently
24 holds that CEQA must be viewed most favorable to protect the environment. *League for*
25 *Protection of Oaklands Architectural etc. Resources v. City of Oakland* (1997) 52, Cal.App.4th
26 896; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; *Architectural*
27 *Heritage Assn. v. County of Monterey* (2004), *supra*, 122 Cal.App.4th 1095. Based on a long
28 history of case law, the fair argument standard applies to all challenges to negative declarations,
and there is no reason for that to change in the present case.

Petitioner's Reply to Willow Creek NewCo LLC's Opposition to Petitioners Supplemental Points and
Authorities

1 Furthermore, *Citizens and Valley Advocates* are distinguishable because both discuss a
2 historical determination, or non determination, at the preliminary review stage of CEQA.
3 *Citizens* continually refers to the City's determination of historicity made at the preliminary stage
4 of environmental review, specifically a historicity determination made by the City's Preservation
5 Committee after noticed hearing. We are in the **second stage** of the process and a MND has
6 been completed, and its legal adequacy, if adopted, will be promptly challenged. *Valley*
7 *Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039 is also inapplicable. In *Valley*
8 *Advocates*, a prior decision by the City had been made not to list a building to the historical
9 resources list. In our case no prior decision by the County Board of Supervisors or any other
10 authority has been made to **not list** the barn as a historical resource. *Valley Advocates* states,
11 "[t]he Legislature did not intend that the fair argument standard apply to the question of
12 historicity during the **preliminary review stage** of an environmental review." *Id.* at 1172,
13 emphasis added. Again, the case at bar is beyond the preliminary review stage, thus the fair
14 argument standard applies.

15 This case is far more analogous to *Architectural Heritage* where the fair argument
16 standard was applied. *Architectural Heritage, supra*, 122 Cal.App.4th 1095. "[I]n reviewing the
17 adoption of a negative declaration, the concern of both trial courts and appellate courts 'is
18 whether there is substantial evidence in the record supporting a fair argument of significant
19 environmental impact'." *Id.* at 1109. In *Architectural Heritage*, "the fair argument standard
20 applies to all three substantive issues—**historicity**, impact, and mitigation—since they all bear
21 on the question of whether an EIR is required." *Id.*

22 In *Architectural Heritage*, the Appellate Court determined that the County of Monterey
23 was required to do an EIR for the demolition of the old jail because there was substantial
24 evidence supporting a fair argument that the jail was in fact a historical resource even though it
25 was not on the CRHR or National Register. *Id.* at 1105. "The second factor (criterion 2) is
26 particularly relevant here: 'Association with the lives of persons important to local, [1104]
27 California, or national history'." *Id.* at 1103-1104. The old jail was associated with Cesar
28 Chavez (a historic figure) who was incarcerated at the jail. *Id.* at 1113. **The Court held this**

*Petitioner's Reply to Willow Creek NewCo LLC's Opposition to Petitioners Supplemental Points and
Authorities*

1 alone was sufficient for a fair argument that the jail was historic. *Id.* The *Architectural*
2 *Heritage* Court concluded demolition of the jail would have a significant environmental impact.
3 *Id.* at 1118.

4 Likewise, the LSA Archaeological Report Memo states, “[r]esearch indicated that the
5 Barn is located on a portion of a larger ranch that was once owned by King Vidor, an early
6 Hollywood producer, director, and screenwriter.” (Decl. of Michael Hibma, p. 2.) Real Party
7 touts on its own website the historical significance of the property as having previously belonged
8 to King Vidor.

9 This slice of heaven was originally owned by legendary Hollywood director and producer
10 King Vidor, who called this place Willow Creek Ranch. Vidor directed such classics as
11 War & Peace, Stella Dallas, Northwest Passage, and The Champ, as well as the black and
12 white portion of The Wizard of Oz. Vidor, himself a survivor of a legendary tornado in
his native Galveston, Texas, created the classic film’s epic tornado sequence as well as
directed the iconic scene in which Judy Garland sings ‘Somewhere Over the Rainbow’.”
<http://www.pasolivo.com/index.php/our-story/>.

13 The association with a famous individual, King Vidor, “alone [is] sufficient for a fair
14 argument that the jail was historic.” *Architectural Heritage*, *supra*, 122 Cal.App.4th at 1105.
15 “The King Vidor association makes the barn a significant cultural resource for the County of San
16 Luis Obispo.” (First RJN, Exh. F). “A project that may cause a substantial adverse change in the
17 significance of an historical resource is a project that may have a significant effect on the
18 environment.” (CEQA Guidelines § 15064.5.) The famous association, in conjunction with the
19 experts opinion that the King Vidor Barn may qualify for CRHR 3 listing, constitutes substantial
20 evidence supporting a fair argument that the barn is of historical significance. The proposed barn
21 demolition of a historical resource will thus have a significant effect on the environment and
22 therefore an EIR shall be required.

23 Real party states, “regardless of which standard applies, petitioners have failed to produce
24 ‘substantial evidence’ that the existing storage structure³ is historic.” (Real Party’s Opp., p. 2.)
25 .” Real Party contends that there is “no competent evidence challenging the findings of LSA”
26

27 ³ See First RJN Exhibit A where Pasolivo is using the barn for an event. The barn is more than a mere
28 “storage structure.”

1 (Real Party's Opp., p. 8.) and that the experts opinions are "wholly speculative." Petitioners
2 disagree.

3 Case law makes clear that the barn can qualify as a historic resource even if it is not on
4 the California Register of Historical Resources (CRHR), but here Petitioners have produced
5 credible expert evidence that the barn has the potential to be eligible for the CRHR. Petitioners
6 have clearly submitted substantial evidence, including expert reviews, that there is substantial
7 evidence to support a fair argument that the King Vidor barn is historic. For example, in
8 *Architectural Heritage, supra* at 1114, the Court stated:

9 Cartier concluded that the jail "does appear ... to qualify as potentially eligible for
10 listing" on the California Register of Historic Resources [CRHR] ... under the second
11 criterion Cartier thus explicitly acknowledged the "historic significance of the
12 structure"

13 Expert Christopher McMorris concluded the same as to the King Vidor barn, but as it applied to
14 Criterion 3. (Decl. of Christopher McMorris, Exh. 1, p. 2.) Thus, the King Vidor Barn appears
15 to be eligible for CRHR listing under both Criterion 2 (based on the association with a famous
16 person) and Criterion 3 for its unique construction (based on the Peer Review of Christopher
17 McMorris, First and Second Declaration of Jack Hanauer).

18 **Statement of Jack Hanauer**

19 California Evidence Code section 702(b) states, "[a] witness' personal knowledge of a
20 matter may be shown by any otherwise admissible evidence, including his own testimony." Mr.
21 Hanauer has worked in construction for over forty (40) years and he has worked on "many
22 unique and interesting construction projects." (Second Declaration of Jack Hanauer.) He
23 worked on restoring the King Vidor barn and thus has direct and personal knowledge of its
24 unique features.

25 "Probably the most unique characteristic of this old barn (that I have never seen in all my
26 years working in north county) are the interior posts that support the roof structure. These
27 posts were not made out of milled lumber.....they are trees.....debarked trees that reach
28 20' plus in height, that support the roof beams."

1 *Id.* Mr. Hanauer's observation of the uniqueness of the barn is **supported** by the Declaration of
2 Michael Hibma. "[T]he use of debarked oak trees to support the roof is an **instance of a site-**
3 **specific barn construction technique.**" (Declaration of Michael Hibma, Memorandum, p. 9.)

4 As Mr. McMorris states, "there appears to be some potential that the barn embodies
5 distinctive characteristic for a type, period, region, **or method of construction, such that it**
6 **would be eligible under CRHR Criterion 3**, and it may retain sufficient historic integrity to
7 convey its significance." (Declaration of Christopher McMorris, Ex. 1, p. 6).

8 Mr. Hanauer has personal knowledge of the barn, has used his own two hands to work on
9 the barn, and comes to the same conclusion as to its unique character as both the LSA Associates
10 expert and Petitioner's expert. His statement provide substantial evidence supporting a 'fair
11 argument' that the barn is historic in nature and that significant impacts or effects may occur if
12 the historic barn is torn down.

13 **Declaration of Christopher McMorris**

14 Real Party concedes Christopher McMorris is "qualified to offer opinions regarding the
15 historicity of the barn." (Real Party's Opp, p. 9.) However, Real Party asserts that Mr.
16 McMorris' report is solely based upon "speculation and conjecture" without any explanation.
17 Real Party also argues that Mr. McMorris' statements are not sufficient and that it must be
18 proven that the barn is historic in nature. This is not the law.

19 Mr. McMorris meets and exceeds "the Secretary of the Interior's Professional
20 Qualification Standards (as defined in Title 36 Code of Federal Regulation, Part 61) under
21 History and Architectural History." (Decl. of Christopher McMorris, Ex. 1, p. 1.; Second Decl.
22 of Christopher McMorris, Ex. 1, CV of Christopher McMorris) Mr. McMorris determined the
23 barn possesses qualities which may lead to the qualification of historic registry under the
24 California Register of Historical Resources ("CRHR") and The LSA Archaeological Report
25 failed to sufficiently evaluate the barn to determine if it is eligible for the CRHR.

26 "The evaluation does not sufficiently address the barn's potential significance for
27
28

1 embodying distinctive characteristics of a type, period, region, and method of
2 construction, and the report lacks adequate substantial evidence to support this aspect of
3 the evaluation. Please note, a resource can be eligible if it is found to embody distinctive
4 characteristics of a type, period, region, and method of construction, without being the
5 work of a master or possession high artistic value.”

6 (Decl. of Christopher McMorris, Exh. 1, p. 2.)

7 Mr. McMorris further reviewed the LSA Associates May 27, 2015 Memorandum. “None
8 of the LSA documents (memos and report) provide historic context regarding the existing
9 building stock of northwest San Luis Obispo County or the Central Coast....[I]n the National
10 Park Service, National Register Bulletin 15, *How to Apply the National Register Criteria for*
11 *Evaluation*, properties must be evaluated within their appropriate historic context.” *Id.* at p. 2.
12 Based on his review, Mr. McMorris determined that “there is still a lack of sufficient substantial
13 evidence in the record to support the conclusion that the barn on the Pasolivo property is not
14 eligible under CRHR Criterion 3 for embodying distinctive characteristics of a type, period, and
15 method of construction.” (Second Declaration of Christopher McMorris, p. 3.).

16 “If there is disagreement among expert opinion supported by facts over the significance of
17 an effect on the environment, the lead agency shall treat the effect as significant and shall prepare
18 an environmental impact report’.” *Keep Our Mountains Quiet v. County of Santa Clara* (2015)
19 2015 Cal.App. LEXIS 387, *1 (Cal.App.6th Dist. May 7, 2015); CEQA Guidelines 15064(g).
20 There is clearly a disagreement about the conclusion of the LSA Archeological Report regarding
21 the significance of the barn. Thus an EIR is required and the fair argument standard is met.

22 **Statement of Carole Denardo**

23 Real Party concedes that “Ms. Denardo appears qualified to render expert opinions
24 regarding the potential historical significance of the barn.” (Real Party’s Opp, p. 10; Second
25 Declaration of Carole Denardo.) “Based on a review of already compiled research, a few
26 questions and comments have resulted that have the potential to change the outcome of the
27 historical resources evaluation results.” (Decl. of Carole Denardo, Ex. 1, p.1.) Like Mr.
28 McMorris, Ms. Denardo is doubtful as to the conclusions drawn by the LSA Archaeological

1 Report, constituting a dispute among experts and CEQA thus requiring an EIR. The fair
2 argument standard is met. In any event, Petitioners would have a strong likelihood of success
3 even if they had to show that there was no substantial evidence to support a determination by the
4 County that the King Vidor barn is not a historical resource. In light of the fundamental errors in
5 the LSA submittal contained in the Initial Study, such as the erroneous year of construction (25
6 years later) and the claims that the barn is unsafe and was heavily damaged in an earthquake,
7 there is no substantial evidence to support a finding that the barn is not a historical resource.
8 Petitioners' experts have determined that the LSA Archeological Report is inadequate in its
9 evaluation of the potential historical significance of the barn. Mr. Hanauer's Declaration also
10 provides strong evidence rebutting the LSA Archaeological Report, which, combined with other
11 established errors in the LSA Archaeological Report, preclude it from serving as substantial
12 evidence to support a finding that the barn is not historic.

13 **C. Petitioners will Suffer Irreversible Irreparable Harm without an Injunction**

14 Petitioners will suffer irreversible irreparable harm if the injunction is denied. Once the
15 barn is gone, there is no bringing it back. Petitioners and the Adelaida community will be
16 irreparably harmed if the barn is demolished. The barn is unique in its construction, it was once
17 part of King Vidor's property, and it is "one of a kind." The LSA Archaeological Report is
18 fatally flawed in its evaluation as to whether the barn is eligible for CRHR and a full EIR is
19 required. This matter should be resolved first. The County should be required to draft an EIR
20 and legally comply with CEQA and the EIR should address the historical nature of the barn
21 (among other things) and the barn should remain standing while the County and Real Party
22 perform its legal obligations under CEQA.

23
24 There will be no prejudice to Real Party if the Court grants a Preliminary Injunction
25 prohibiting the barn's removal until this matter is resolved. Indeed Real Party has recently
26 used the barn for events. The Pasolivo Facebook page shows Pasolivo hosting a party inside the
27
28

1 barn on February 27, 2014 (First RJN, Exh. A). "The barn is in good condition" according to
2 the LSA Archeological Report.


3
4 **D. The Bond Request is Excessive; Any Bond Should be Nominal**

5 Real Party contends that litigation will stall Real Party's project for a year and is thus
6 entitled to a \$1,000,000 bond. Petitioners query as to how Real Party came up with the duration
7 of a one year delay in the project. Petitioners are willing to keep this case moving and there is a
8 tentative settlement meeting scheduled in June, 2015. It is of note that Petitioners, County and
9 Real Party were scheduled to engage in a meeting on March 24, 2015. However, at 4:00 p.m. on
10 March 23, 2015, Petitioner's counsel received a call that Real Party cancelled the meeting..
11 Petitioners have made efforts to meet and resolve the matter early and have come up against
12 resistance from Real Party.

13
14 Real Party's bond request exceeds that permitted by law. Code of Civil Procedure
15 Section 529.1(b) states, "[t]he liability of the plaintiff pursuant to this section for the costs and
16 damages of the defendant shall not exceed five hundred thousand dollars (\$500,000).
17 Furthermore, *Uphold Our Heritage v. Town of Woodside* 147 Cal. App. 4th 587(2007) 147
18 Cal.App.4th 587 states, "[t]he willingness of the applicant to accept a feasible alternative,
19 however, is no more relevant than the financial ability of the applicant to complete the
20 alternative. To define feasible as appellants suggest would render CEQA meaningless." Thus,
21 the Declaration of Brian Kirk bears no significance on the present matter.

22 Dated: June 1, 2015

23 Respectfully submitted,
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24 
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26 WILTON AND HELEN WEBSTER
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*Petitioner's Reply to Willow Creek NewCo LLC's Opposition to Petitioners Supplemental Points and
Authorities*